REMARKS

This Response is to the final Office Action dated February 17, 2009. Claims 1 and 14 have been amended for clarity. New claims 31 and 32 have been added. No new matter was added by these amendments or new claims. Please charge Deposit Account No. 02-1818 for any fees due in connection with this Response.

Applicants submit that the above claim amendments were made for clarification and to place the application in better condition for allowance (as discussed in more detail below). Accordingly, Applicants respectfully request that the Patent Office enter the above amendments and issue a Notice of Allowability.

In the Office Action, claims 1 and 14 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the Office Action asserts that:

(1) Claims 1 and 14 are indefinite because the meaning of the second server "separated" from medical device and the terminal device is unclear. Page 3, paragraph number 6 of the Office Action asks:

> Do the first and second servers communicate via a second network or is the second server a part of the first server? Does "separated" simply mean that the same network that connects the first server to the medical and terminal devices is used but that a firewall exists between those devices and the second server?

(2) Claim 1 is additionally indefinite because:

(a) it is unclear where the message generated by the second server is sent; and

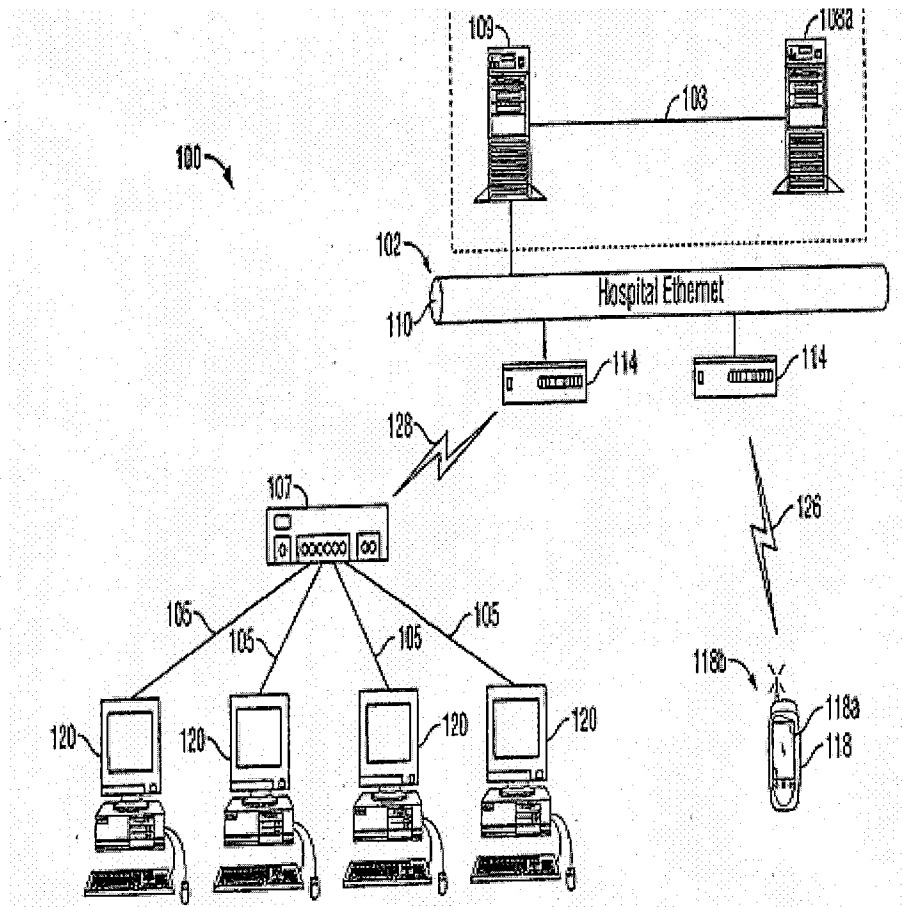(b) it is unclear what initiates the message generated by the second server.

(3) Claim 14 is additionally indefinite because:

(a) it is unclear where the response message is sent; and

(b) it is unclear what initiates the message generated by the second server.

Regarding (1) above, Applicants have amended each of claims 1 and 14 to include the second server (claim 1) and second central computer (claim 14) separated from the medical device and the terminal device, "via . . . a second network." Applicants submit that one of ordinary skill would understand how the second server and second central server is separated from the medical device and the terminal device of presently presented claims 1 and 14 when

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read in light of Applicants' specification. For example, FIG. 3, reproduced below, and the accompanying text of Applicants' specification show and describe an embodiment of claims 1 and 14 as presently presented including a second server 108a separated from the medical device and the terminal device via the first network 102, the first server 109, and the second network 103.

More specifically, regarding the second network, paragraph [0095] of Applicants' pre-grant publication, quoted in part below, describes FIG. 3 and the separation of the second server 108a via the second network 103 as:

> The central system 108 can include a first central server or computer 109 and a second central server or computer 108a. In one embodiment, a separate communication system 103 may be provide for communication between the first central server 109 and the second central server 108a. In one embodiment, a separate communication system 103 may be provide for communication between the first central server 109 and the second central server 108a. In a preferred embodiment, the separate communication system 103 is an isolated point-to-point cable communication Ethernet network.

In view of at least this disclosure and the above clarifying amendments, Applicants submit an artisan of ordinary skill would understand how the second server is separated from the medical device and the terminal device of claim 1.

Regarding (2)(a) above, Applicants have amended claim 1 to include, "the message including patient information . . . sent to at least the terminal device."

Regarding (2)(b) above, Applicants have amended claim 1 to include, "the message generated at least in part upon a request from the first server."

Regarding (3)(a) above, Applicants have amended claim 14 to include, "wherein the response message is sent to at least the terminal device."

Regarding (3)(b) above, Applicants have amended claim 14 to include the response message generated upon request from one of the terminal device and the medical device.

In view of the amendments and reasons given above, Applicants submit that claims 1 and 14 as presently presented are definite. Applicants accordingly respectfully request that the rejections under 35 U.S.C § 112, second paragraph, be reconsidered and withdrawn.

In the Office Action, claims 1 to 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publicatioin 2002/0038392 to De la Huerga ("*De la Huerga*") in view of U.S. Patent No. 6,980,958 to Surwit et al. ("*Surwit*") in view of U.S. Patent Application Publication 2003/00078808 to Ng ("*Ng*"). Applicants respectfully traverse this rejection.

As an initial matter, regarding the rejection of independent claim 1, the Office Action states that it gave, "little weight" to the limitation of, "a message generated . . . the message including patient information", reasoning that the effect of the contents of the message was not made clear in the claims.

Claim 1 as presently presented includes, in part, "a message generated by the second server, the message generated at least in part upon a request from the first server and transmitted over the first network through the first server, the message including patient information, the message sent to at least the terminal." Applicants submit that one of ordinary skill in the art would understand the effect that the, "message . . . including patient information" has on the system of claim 1 as presently presented, particularly when read in light of Applicants' specification. For example, paragraph [0103] in Applicants' pre-grant publication states:

Conversely, the first central server 109 has software loaded and configured for sending and receiving data to and from multiple hubs 107, multiple digital assistants or user interfaces 118, and with the second central server 108a. As explained in detail below, the first central server 109 may perform several functions, including, but not limited to: comparing prescription parameters as received from server 108a to the applicable programmed pump settings received from the hub 107 system; relaying notifications and messages to the digital assistants 118; relaying alarm and alert information received from the hub 107 system to the appropriate digital assistant 118; relaying pharmacy and patient information as communicated from the server 108a to the appropriate digital assistant 118; and compiling pump status and alarm monitoring data and relaying this data to server 108a on a periodic basis. If required, the operations performed by the server 109 are compliant with the Health Insurance Portability Act of 1996 (August 21), Public Law 104-191. Typically, the data resident in the first central computer or server 109 is an intersection with the data resident in the second central computer or server 108a. Server 109 contains a subset of the data contained in server 108a that is required to perform its functionality. Server 109 also contains data relating to the system network 102, hubs 107 and infusion pumps 120 that are required to perform its functionality. As explained above, such data is generally that data required for the functions or performance of the digital assistants 118 and medical devices 120.

Based at least on this description, Applicants submit that an artisan of ordinary skill would understand that the message generated by the second server of claim 1, which includes patient information, is data that at least affects the function or performance of the digital assistants and medical device. Accordingly, Applicants submit that the message including "patient information" is language in the system of claim 1 that should be accorded weight.

Further, Applicants respectfully submit that the rejection of claim 1 is improper at least because an artisan of ordinary skill would not combine *De la Huerga*, *Ng*, and *Surwit* to arrive at the system of claim 1. To begin, other than the blanket assertion that the claimed elements are "merely a combination of old elements," the Office Action provides no reason why one of ordinary skill in the art would combine *De la Huerga*, *Ng*, and *Surwit*. See, Office Action, pg. 7.

Applicants respectfully submit that the "combination of old elements" rationale is inapplicable to this case. Applicants claimed system does not neatly fit into the category of invention in which a rationale of a mere combination of "old elements," or a simple substitution of one element for another is a proper basis for maintaining an obviousness rejection. The U.S. Supreme Court cautioned against oversimplifying the standard they articulated for determining obviousness, stating, "[f]ollowing these principles may be more difficult in other cases than it is

here because the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement." *K.S.R. International v. Teleflex, Inc.*, 127 S.Ct. 1727, 1731 (2007). Clearly, this case is one where a simple substitution of one element for another or a mere combination of old elements type of reasoning does not easily apply. Instead, a much more detailed analysis is warranted.

For example, in this case, Applicants submit that one of ordinary skill in the art would not combine the teachings of *De la Huerga* with *Ng*, or the teachings of *De la Huerga* with *Surwitt* as suggested by the Office Action to arrive at the system of claim 1. Page 6 of Office Action admits that *De La Huerga* fails to teach, "a second server and that the medical device routs status messages to the terminal devices through the server," stating:

> *Ng* teaches medical devices (Fig. 3. ele. 20a-20c) and terminal devices (Fig. 3, ele. 44a-44d) connected via a network (Fig. 3, ele. 12, 14, 30 and 40) to a first server (Fig. 3, ele. 34; and Fig. 4, ele. 34) which is connected to a second server (Fig. 4., ele. 48) in such a way as to rout all communication between either the medical or terminal device and the second server through the first server. Furthermore, Surwit et al. teaches remote patient monitors and physician access terminals connected to a server through a network wherein patient status information is sent from the patient monitor to the server to the server and from the server to the physician's terminal upon request.

Regarding the proposed combination of *De la Huerga* and *Ng*, *De la Huerga* is generally directed to:

> A method and apparatus for controlling an infusion pump. The system includes providing information tags on IV bags that specify delivery parameters, obtaining delivery parameters for at least one bag, associating a controller with a particular patient, comparing patient information for the particular patient with the delivery parameters, determining the efficacy of delivering the medicant to the patient and affecting pump control as a function of the comparison. See, Abstract.

The system of *De la Huerga* obtains patient information for the particular patient and compares the patient information to delivery parameters and "affects pump control as function of the comparison." *Ng*, in contrast, generally discloses a tracking system for use in the blood collection industry. In one embodiment of *Ng*, the system includes a central server 48. The Office Action seems to suggest that it would be obvious to include the central server 48 taught in *Ng* with the method of controlling the infusion pump taught by *De la Huerga*. It is unclear how,

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or why, an artisan of ordinary skill in the art would make such a modification to the method of controlling an infusion pump of *De la Huerga*.

Further the Office Action appears to admit that *Ng* does not disclose sending a message that includes <u>patient information</u> from the central server, relying on *De la Huerga* and *Surwit* for such a teaching. See, Office Action, page 7. The Office Action has appeared to make another leap from, it would be obvious to include the central server of *Ng* in the system of *De la Huerga*, to it would also be obvious to include the central server 48 of Ng and to generate a response message from the server 48 of Ng including patient information that is transmitted to another server. The Office Action again provides no reasoning for why or how this modification of the system of *De la Huerga* would be made, other than the allegation that this is merely a combination of old elements. Applicants submit that this is hardly a convincing line of reasoning necessary to maintain an obviousness rejection, as required by the M.P.E.P guidelines. See, M.P.E.P. § 2142; § 2143.01 (III); KSR International Co. v. Teleflex Inc., 127 S.Ct. 1737, 1741 (2007). For these reasons, the Office Action appears to be relying on Applicants own disclosure in an impermissible hindsight attempt to piece together Applicants' claimed invention.

Regarding the proposed combination of *De la Huerga* and *Surwit*, Applicants submit that, "remote patient monitors and physician access terminals connected to a server though a network wherein patient status information is sent from the patient monitor to the server and from the server to the physician's terminal upon request" is insufficient to teach or even suggest, a second server that generates a message including patient information. Instead, this teaching is only with reference to a single server. The combination of *De la Huerga* and *Surwitt* fails to disclose the limitation of a message generated by a second server, the message generated at least in part upon a request from the first server and transmitted over the first network through a first server, the message including patient information, the message sent to at least the terminal. It appears that the Office Action is again relying solely on Applicants' own disclosure for linking elements and is therefore using improper hindsight bias to reject Applicants' claimed invention.

Third, the Office appears to admit that *Ng* does not disclose a message including patient information, stating that the prior art teaches such information (relying on *Surwit* for the teaching of such a message and *De la Huerga*). See, Office Action, page 7. Applicants respectfully submits that neither *Surwit* nor *De la Huerga* disclose, "a message generated by a second server,

the message generated at least in part upon a request from the first server and transmitted over the first network through a first server, the message including patient information." Applicants respectfully submit that it does not follow that because *Surwit* and *De la Huerga* allegedly teach patient information sent from a single server, that it would be obvious, in view of these teachings, to generate a message from a second server with such information. Indeed, the Office Action provides no explanation for how, or why, one of ordinary skill in the art would generate such a message from a second server.

In sum, Applicants respectfully submit that the Office Action is selectively choosing elements from isolated disclosures in *De la Huerga, Ng,* and *Surwit* in an impermissible hindsight attempt to recreate Applicants' claimed invention and this type of reasoning is improper. Even assuming that each of the element of the system of claim 1 were disclosed in the applied art, the Supreme Court has mandated that, "[a] patent is not proved obvious merely by proving that each of its elements was independently known in the prior art." *K.S.R. International v. Teleflex, Inc.,* 127 S.Ct. 1727, 1731 (2007).

For at least these reasons, Applicants submit that independent claim 1 and claims 2 to 13 which depend from claim 1 are patentably distinguished over *De la Huerga, Ng* and *Surwit* and in condition for allowance.

Independent claim 14 includes similar elements to independent claim 1. Accordingly, for at least the reasons give above with respect to claim 1, Applicants respectfully submit that claim 14 and dependent claims 15 to 28 are also patentably distinguished over *De la Huerga, Ng* and *Surwit* and in condition for allowance.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. Applicants kindly request that should the Examiner have any questions regarding this Response or wish to discuss the amended claims, the Examiner contact Applicants' representative.

Respectfully submitted,

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